

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY BRIAN MALLGREN,

Plaintiff,

v.

AMERICAN EXPRESS,

Defendant.

NO: 13-CV-0232-TOR

ORDER DISMISSING CASE

BEFORE THE COURT is Plaintiff's request to file a *pro se* complaint *in forma pauperis*. ECF No. 1 and 2.

DISCUSSION

By Local Rule, each United States Magistrate Judge in this District is delegated the authority to "[r]ule upon applications to proceed *in forma pauperis*, pursuant to 28 U.S.C. § 1915." LMR 1(a)(16). By Order dated June 19, 2013, a United States Magistrate Judge reviewed Plaintiff's application to proceed *in forma pauperis* and denied the same with leave to renew. ECF No. 4. The Order explained that Plaintiff provided an incomplete answer to question number 9, but

1 allowed Plaintiff thirty days to submit a properly completed application (or pay the
2 full filing fee). *Id.* Thirty days has passed. Plaintiff chose neither alternative, he
3 filed a notice of appeal to the Ninth Circuit Court of Appeals instead. ECF No. 5.
4 The Ninth Circuit Court of Appeals dismissed Plaintiff's appeal on July 11, 2013.
5 ECF No. 10.

6 ***In Forma Pauperis* Determination**

7 *Forma pauperis* status requires two findings: (1) a finding of indigency, and
8 (2) a finding that the underlying claim has some merit. *Bradshaw v. Zoological*
9 *Soc. of San Diego*, 662 F.2d 1301, 1308 (9th Cir. 1981). Pursuant to 28 U.S.C.
10 § 1915(e)(2)(B), notwithstanding any filing fee, or any portion thereof, that may
11 have been paid, the court shall dismiss the case at any time if the court determines
12 that the action or appeal (i) is frivolous or malicious or (ii) fails to state a claim
13 upon which relief may be granted.

14 A complaint fails to state a claim upon which relief may be granted if it
15 lacks a cognizable legal theory or lacks sufficient facts to support a cognizable
16 legal theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).
17 Plaintiff's Complaint does not state a cognizable legal theory, i.e., short plain
18 statements showing the court's jurisdiction and the grounds for relief. *See* Fed.
19 Rule Civ. Pro. 8(a).

1 Plaintiff complains that he purchased a Bluebird Account Set Up Kit for \$5
2 and made an initial deposit of \$5 on this prepaid card account. ECF No. 1 at 2.
3 Plaintiff complains that his prepaid card does not work and he cannot access his
4 money. *Id.* Plaintiff complains that he was deceived, would not have purchased
5 this product, but would likely have chosen another product. *Id.* at 3. Plaintiff
6 asserts “the statutes and standards presented for federal consideration include 15
7 U.S.C. § 52 (a).” *Id.* He seeks a refund of the purchase price (\$5) and the funds on
8 the card (\$5) be made available for Plaintiff’s use. *Id.* Further, Plaintiff seeks
9 injunctive relief prohibiting American Express from misleading consumers and
10 disclosing terms and conditions in plain terms, not within a sealed product
11 package. *Id.* at 4.

12 There is no private right of action for violation of the business practices
13 proscribed under the Federal Trade Commission Act. *See Dreisbach v. Murphy*,
14 658 F.2d 720 (9th Cir. 1981). Thus, Plaintiff does not articulate a cognizable legal
15 theory upon which relief may be granted.

16 Plaintiff failed to avail himself of the opportunity to amend his application to
17 provide complete information, nor has he paid the filing fee within thirty days.

18 The Court recognizes that Plaintiff has filed at least 29 cases in the United
19 States District Courts and 12 cases in the Circuit Courts of Appeal, this year. This
20 case is one of eight actions which have been filed in this District since May 10,

2013. Eastern District of Washington case numbers 13-CV-0175-LRS, 13-CV-0180-TOR, 13-CV-0182-TOR, 13-CV-0210-TOR, 13-CV-0218-TOR, 13-CV-0228-TOR, 13-CV-0232-TOR, and 13-CV-0234-TOR. The first seven in this list have now been dismissed by the District Court for failure to state a claim.

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Plaintiff is advised that the filing of further frivolous actions will result in the imposition of more serious sanctions than dismissal.

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ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Application to Proceed in the District Court In Forma

Pauperis, ECF No. 2, is **DENIED**.

2. Plaintiff's proposed Complaint, ECF No. 1, is **DISMISSED**.

The District Court Executive is hereby directed to enter this Order, a Judgment of Dismissal, furnish copies to Plaintiff at his last known address, and **CLOSE** the file.

DATED July 24, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge